

EXHIBIT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**In re: Oral Phenylephrine Marketing and
Sales Practices Litigation**

**Case No. 1:23-md-3089
MDL No. 3089**

**DECLARATION OF KILEY LYNN
GROMBACHER**

**DECLARATION OF KILEY LYNN GROMBACHER IN SUPPORT OF LEADERSHIP
GROUP'S MOTION FOR APPOINTMENT OF INTERIM LEAD COUNSEL**

I, Kiley Lynn Grombacher, hereby declare as follows:

1. I am a founding partner at Bradley/Grombacher LLP (“BG”). I am a member in good standing of the bars of the States of California and Tennessee. My application to practice before this Court *pro hac vice* will be forthcoming.
2. I am counsel of record for plaintiff Cody Morgan¹.
3. I have prepared this Declaration in Support of the Consensus Leadership Group’s proposed leadership structure for Multidistrict Litigation Number 3089 In re Oral Phenylephrine Marketing and Sales Practices Litigation, and for my appointment as Interim Class Counsel, Pursuant to Federal Rule of Civil Procedure 23(g) (“Motion for Appointment”) as a member of the Executive Committee (“EC”) within that structure.
4. Specifically, in this declaration, I shall address the criteria for leadership positions as set forth in the Manual for Complex Litigation. These criteria include: (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3)

¹ *Cody Morgan v. The Proctor & Gamble Company et. al.*, transferred from United States District Court Southern District of Florida, Case Number 3:23-cv-24628.

professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. (See Sections 10.22 and 40.1 of the *Manual for Complex Litigation* (4th ed.).)

5. The following statements are based on my personal knowledge and review of the files and, if called on to do so, I could and would testify competently thereto.

EXPERIENCE OF COUNSEL & ABILITY TO WORK COOPERATIVELY WITH OTHERS

6. Bradley/Grombacher LLP is a national plaintiffs' law firm representing a broad array of clients in class and mass actions, individual arbitrations, and multidistrict litigation matters at the trial and appellate levels across federal and state courts. Serving hundreds of thousands of clients in litigation and arbitration, we have prosecuted high-profile employment, privacy, consumer-rights, and product liability cases. Details on the work, experience and accomplishments of the firm can be found at www.bradleygrombacher.com.

7. I have been a member of the State Bar of California since 2006 and a member of the State Bar of Tennessee since 2017. I am also a member of the bars of the Ninth, Seventh and Third Circuit and I am admitted to practice before the United States Court of Federal Claims. I hold the following degrees: B.A., Psychology and Political Science, University of California, Los Angeles; J.D., Chapman University.

8. I have argued cases before trial courts and courts of appeal. My writings on legal topics pertaining to class and representative actions have appeared in professional publications and I have been called upon to speak at conferences and seminars for professional organizations. I have also been honored as a Super Lawyer in the area of class actions by Los Angeles Magazine since 2018 and was selected by the magazine as a Rising Star in this area in 2015 and 2016. I was also

recently honored as one of the Top 100 Women in Law and the Top 100 Plaintiff's Lawyers for the current year by the Daily Journal.

9. I began my legal career at Arias, Ozzello & Gignac where I specialized in and gained extensive experience litigating consumer cases. Thereafter, I joined Marlin & Saltzman in 2010, where I focused my practice almost exclusively on class, collective and enforcement actions including the reported case, *Faulkinbury v. Boyd & Associates*, which clarified the holding in a seminal case, *Brinker Restaurant Corp. v. Superior Court* to establish that legality of certain company policies could be determined on a class-wide basis even if the application of the policies varies by individual.

10. My associates and I have considerable experience handling complex consumer class action cases with claims similar to those asserted in this action and have successfully represented hundreds of thousands of individuals in state and federal court cases. I have extensive experience litigating, certifying and settling class actions².

² See e.g. for example, *In Re Bank of America Wage and Hour Employment Practices Litigation*, United States District Court for the District of Kansas (MDL 2138). Settled for \$73 million; *Stern v. AT&T Mobility Corporation f/k/a Cingular Wireless Corporation*, United States District Court Central District of California (Case No. 2:05-CV-08842-CAS). Settlement with total value of the available settlement benefits equaling \$38,280,748; *Lozano v. AT&T Wireless Services, Inc.*, United States District Court Central District of California (Case No 2:02-CV-00090-CAS). Settlement with total value of the available settlement benefits equaling \$42,700,800. *Brenner v. Kevita, Inc.*, Superior Court, State of California, County of Ventura (Case No. 56-2017-00502340-CU-FR-VTA). Settlement with total estimated value of available monetary benefits equaling more than \$5,000,000 and injunctive relief valuing between \$26,200,446.76 and \$34,397,145.69.

11. I have been appointed either lead or co-lead counsel including cases in multi-district litigation or coordinated proceedings where I worked collaboratively and cooperatively with co-counsel to bring about an efficient and beneficial resolution for all class members as the above results demonstrate. I have also fostered relationships with members of the defense bar and have worked cooperatively with many of the firms representing the defendants in this action in prior litigations.

12. For these reasons, I, and my firm, have repeatedly received favorable judicial recognition. For example, Judge Singhal recently noted that “Class Counsel's experience in product liability class action litigation generally and experience in false advertising litigation specifically has been brought to bear here, as they effectively worked to bring this case to a successful resolution.” *In re Johnson & Johnson Aerosol Sunscreen Mktg., Sales Prac. and Prods. Liab. Litig.*, 2023 WL 2284684, at *9 (S.D. Fla. Feb. 28, 2023)). Similarly, in June of last year, Cormac J. Carney (US District Court, Central District of California) remarked, “I do want to tell you I appreciate the professionalism in reaching the settlement. I think it's a very fair and good settlement.” *Rosriguez v. Mitsubishi Chemical Carbon Fiber and Composite, Inc. et al.*, Case Number 8:21-cvg-01711-CJC-JDE.

13. I believe my prior experience will make me an asset to the leadership team as I have successfully managed cases with similar claims and defenses. I also believe that the gender and geographic diversity I bring to the Executive Committee will ensure that the diverse interests of the class members are protected. Indeed, research has demonstrated time and time again that diverse teams provide better net results for the audiences or entities they serve. This is because diverse groups include members with different reasoning, interpretation, and problem-solving skills. Moreover, diverse groups are better able to identify errors in group predictions. Diverse teams can also combat groupthink, a mode of thinking that occurs when individuals in a cohesive

group are more prone to strive for unanimity than the best course of action. Such diversity of thought is particularly important in cases such as this that involve complex and novel issues.

WILLINGNESS AND ABILITY TO COMMIT TO THIS LITIGATION &
ACCESS TO RESOURCES

14. BG has the willingness and availability to expend the financial and manpower resources necessary to prosecute this litigation on behalf of the proposed class. My firm is well resourced and has accepted no outside litigation funding other than typical bank lines of credit and loans.

15. Additionally, I will personally devote the time necessary to act as interim class counsel and a member of the executive committee. While I have been appointed to MDL leadership positions in the past, I do not presently hold any such positions and thus have ample time to devote to the present litigation.

EFFORTS IN FURTHERANCE OF THIS LITIGATION

16. My firm is fully committed to this project and has been from the beginning. Before filing any complaint in this action, our firm, in conjunction with our co-counsel extensively investigated the claims in this Action.

17. Following the filing of the Action, our firm has vigorously litigated this case devoting extensive time and resources, which includes, among other things, filing a brief before the Judicial Panel on Multidistrict Litigation (“JPML”) in support of consolidation.

18. Additionally, over the past several months, my firm has co-hosted and participated in phone conferences and in-person meetings with other plaintiffs’ counsel from around the country to discuss legal strategy and coordinate efforts. In that capacity, we have devoted a

significant amount of time working with plaintiffs' ad-hoc committees on issues that will inevitably arise during this litigation. I have also lectured about the issues underlying this litigation.

19. I have past experience working with many of the proposed members of this leadership slate. We have in the past litigated in an efficient and cooperative manner in order to avoid duplication of work and efforts. I will ensure that we similarly coordinate and cooperate in this action.

20. I appreciate the Court's consideration of my application and, if appointed, I look forward to serving the Court and working with the other lawyers and law firms to prosecute this litigation on behalf of our clients and our common interests.

21. Should this case resolve favorably for the plaintiff class, I would only seek fees allowable under the prevailing law and with rates commiserate with the prevailing rates.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed this 21st day of January 2024, at Westlake Village, California.



Kiley Lynn Grombacher

EXHIBIT 1



www.bradleygrombacher.com

Bradley/Grombacher LLP (the "Firm") is a national law firm based in California. The Firm is actively engaged in complex litigation, particularly in the fields of consumer protection, human rights, and employment class actions. The Firm is well-respected for both the zealous advocacy with which it represents its clients' interests, as well as the highly-professional and ethical manner by which it achieves results. The Firm's unparalleled experience and capabilities in these fields are based upon the talents of its attorneys who have successfully prosecuted hundreds of class-action lawsuits.

For these reasons, the Firm, have repeatedly received favorable judicial recognition.

- Judge Singhal recently noted that "Class Counsel's experience in product liability class action litigation generally and experience in false advertising litigation specifically has been brought to bear here, as they effectively worked to bring this case to a successful resolution." *In re Johnson & Johnson Aerosol Sunscreen Mktg., Sales Prac. and Prods. Liab. Litig.*, 2023 WL 2284684, at *9 (S.D. Fla. Feb. 28, 2023).
- Judge Cormac J. Carney (US District Court, Central District of California) remarked, "I do want to tell you I appreciate the professionalism in reaching the settlement. I think it's a very fair and good settlement." *Rodriguez v. Mitsubishi Chemical Carbon Fiber and Composite, Inc. et al.*, Case Number 8:21-cvg-01711-CJC-JDE.

Bradley/Grombacher LLP was formed in 2016, and, since that time, the Firm has recovered more than Fifty Million dollars (\$50,000,000) for injured class members

and the principals of the Firm have been instrumental in recovering over Eight Hundred Million dollars (\$800,000,000) on behalf of workers and consumers throughout their careers including the following settlements:

- a. **Gutierrez v. State Farm Mutual**, Superior Court for the State of California, County of Los Angeles. The case settled for \$135 million just prior to trial.
- b. **Bednar v. Allstate Insurance Company**, Superior Court for the State of California, County of Los Angeles. The case settled for \$120 million just prior to trial.
- c. **Roberts v. Coast National Insurance**, Superior Court for the State of California, County of Orange. The case was settled at arbitration for an amount in excess of \$18 million.
- d. **CNA Class Action Litigation**, Superior Court for the State of California, County of Los Angeles. The case settled for \$33 million.
- e. **Dotson v. Royal SunAlliance**, Superior Court for the State of California, County of Orange. The case settled for \$12.3 million.
- f. **Parris v. Lowe's Home Improvement**, Superior Court for the State of California, County of Los Angeles. The case settled for \$29.5 million.
- g. **Pardo v. Toyota Motor Sales, et al.**, Superior Court for the State of California, County of Los Angeles. The case settled for \$7.75 million.
- h. **Smith/Ballard v. Wal-Mart Stores, Inc.** The action was certified and settled for \$86 million.
- i. **Hoyng v. AON**, Superior Court for the State of California, County of Los Angeles. The case settled for \$10.5 million.
- j. **Heather Stern et al v. New Cingular Wireless Services Inc.**, United States District Court for the Central District of California. Class action settlement worth up to \$250 million.
- k. **In Re Bank of America Wage and Hour Employment Practices Litigation**, MDL 2138, United States District Court for the District of Kansas. The case settled for \$73 million.
- l. **H & R Block Litigation**, United States District Court for the Northern District of California. Class certified, and settlement of \$35 million.

- m. **Roberts v. TJ Maxx of CA LLC.**, United States District Court for the Northern District of California. Class action settlement of \$8.5 million.
- n. **Brenner v. Kevita, Inc.**, Superior Court, State of California, County of Ventura(Case No. 56-2017-00502340-CU-FR-VTA). Settlement with total value of available monetary benefits that could have been claim equaling more than \$5,000,000 and injunctive relief valuing between \$26,200,446.76 and \$34,397,145.69.

Principals

Kiley Lynn Grombacher



Kiley Grombacher is a member in good standing of the State Bar of California (since 2006) and the State Bar of Texas (since 2017). Ms. Grombacher is also admitted to practice before the Third, Seventh and Ninth Circuit Court of Appeals and the Court of Federal Claims. Ms. Grombacher's involvement in various forms of class action litigation spans more than a decade during which time she has litigated hundreds of class actions. Ms. Grombacher began her legal career at Arias, Ozzello & Gignac where she specialized in and gained extensive experience litigating consumer cases. Thereafter, Ms. Grombacher joined Marlin & Saltzman in 2010 where she focused her practice almost exclusively on class, collective and enforcement actions including the reported case, *Faulkinbury v. Boyd & Associates*, which clarified the holding in a seminal case, *Brinker Restaurant Corp. v. Superior Court* to establish that legality of certain company policies could be determined on a class-wide basis even if the application of the

polices varies by individual.

Ms. Grombacher has been appointed either lead or co-lead counsel including cases in multi-district litigation or coordinated proceedings where she worked collaboratively and cooperatively with co-counsel to bring about an efficient and beneficial resolution for all class members as the above results demonstrate.

Ms. Grombacher has successfully briefed and argued cases before trial courts and courts of appeal. Her writings on legal topics pertaining to class and representative actions have appeared in professional publications and she has been called upon to speak at conferences and seminars for professional organizations. I have also been honored as a Rising Star and/or Super Lawyer in the area of class actions by Los Angeles Magazine for multiple years including the current year and was selected as a Top 100 Women in Law and a Top 100 Plaintiff Lawyer by the Daily Journal.

Marcus Bradley



Mr. Bradley, has practiced since 1994. He has been responsible for all facets of class action and other complex litigation, from pre-filing investigation through trial and appeal. Mr. Bradley has been honored as a Super Lawyer in the area of class actions by Los Angeles Magazine for multiple years including 2018.

He is a member of a number of professional organizations including the Consumer Attorneys of Los Angeles, the Consumer Attorneys of California, the California Employment Lawyers Association, and the American Association of Justice.